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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CURTIS and CHARLOTTE WESTLEY,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

OCLARO, INC., et al.,

Defendants.

IN RE OCLARO, INC. DERIVATIVE
LITIGATION

This Document Relates to:

Westley v. Oclaro, Inc.,
No. C11-02448-EMC (NC)

Case No. C11-2448-EMC (NC)
and related consolidated action

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
THE THIRD AMENDED COMPLAINT
FOR VIOLATION OF THE FEDERAL
SECURITIES LAWS**

Lead Case No. C11-3176-EMC (NC)
(Derivative Action)

Date: May 16, 2013
Time: 1:30 p.m.
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

[PROPOSED] ORDER

Defendants Oclaro, Inc., Alain Couder, Jerry Turin, and James Haynes have moved the Court, pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, and the Private Securities Litigation Reform Act of 1995, codified in relevant part at 15 U.S.C. § 78u-4 (2010), *et seq.* (“PSLRA”), to dismiss with prejudice all allegations asserted against them in the Third Amended Complaint for Violation of the Federal Securities Laws (the “Third Amended Complaint”), filed by Lead Plaintiff on March 1, 2013, relating to statements alleged to have been made in July and August 2010. Defendants have also requested that the Court dismiss with prejudice all claims in the Third Amended Complaint asserted against defendant James Haynes. Defendants have further requested that the Court, pursuant to Rule 201 of the Federal Rules of Evidence, take judicial notice of the documents attached to the Declaration of Andrew T. Sumner (the “Sumner Declaration”) as Exhibits 4 through 7.

Defendants’ Motion to Dismiss the Third Amended Complaint for Violation of the Federal Securities Laws (“Motion to Dismiss”) and Request for Judicial Notice were heard on May 16, 2013 at 1:30 P.M. Having considered the parties’ papers, oral argument, and other pleadings and papers filed herein, the Court orders as follows:

1. Judicial notice of the documents attached to the Sumner Declaration as Exhibits 4 through 7 is appropriate under Federal Rule of Evidence 201;

2. The Third Amended Complaint fails to allege a strong inference of scienter, as required under Rule 9(b) and the PSLRA, as to any defendant with respect to statements alleged to have been made in July and August 2010;

3. The Third Amended Complaint fails to assert any claim against James Haynes; and

4. Accordingly, the Third Amended Complaint fails to state a claim under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 or any other claim upon which relief may be granted with respect to: (i) statements alleged to have been made in July and August 2010; and (ii) James Haynes.

1 **WHEREFORE, IT IS HEREBY ORDERED** that defendants' Request for Judicial Notice
2 is **GRANTED. IT IS FURTHER ORDERED** that defendants' Motion to Dismiss is **GRANTED**.
3 The Third Amended Complaint's allegations with respect to statements alleged to have been made in
4 July and August 2010 are hereby **DISMISSED WITH PREJUDICE**. The Third Amended
5 Complaint's claims against James Haynes are hereby **DISMISSED WITH PREJUDICE**.

6 **IT IS SO ORDERED.**

7
8 DATED: _____

Hon. Edward M. Chen
United States District Court Judge

9
10 Respectfully submitted:

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23 COUDER, JERRY TURIN, and JAMES HAYNES